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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TINA M. CLINE,
Plaintiff,

v.

AMERICAN HOME MORTGAGE
SERVICING, INC.,
Defendant.

3:11-CV-790-RCJ-VPC
ORDER

Currently before the Court is Plaintiff's Motion to Remand (#3).

BACKGROUND

In October 2011, Defendant American Home Mortgage Servicing, Inc. ("AHMSI") filed a petition for removal based on diversity jurisdiction and attached Plaintiff Tina M. Cline's complaint that had been filed in the Second Judicial District. (Amended Pet. for Removal (#2) at 3; Compl. (#1-1) at 4-12). In the complaint, Plaintiff sued AHMSI and sought "declaratory judgment to quiet title against" the named defendant. (Compl. (#1-1) at 4).

The complaint alleged the following. On April 28, 2006, Plaintiff executed a note secured by a deed of trust on a piece of real property located in Washoe County. (*Id.* at 4-5). Plaintiff made continuous payments on her loan. (*Id.* at 5). At some point in time, AHMSI made interest rate adjustments to Plaintiff's loan and failed to notify Plaintiff pursuant to the terms in the deed of trust. (*Id.*). In April 2011, Plaintiff experienced a temporary financial hardship and did not make her regularly scheduled payment on April 1, 2011. (*Id.* at 6). Plaintiff made her payment on May 4, 2011, and made additional payments on May 26, 2011 and June 1, 2011. (*Id.*). AHMSI rejected Plaintiff's payments. (*Id.*). If AHMSI had accepted

1 her payments she would have been current on her loan obligations as of June 1, 2011, except
2 for the fees and charges related to her late payments in April and May. (*Id.*). Plaintiff
3 contacted AHMSI who informed Plaintiff that she would have to pay \$15,000 to bring her loan
4 current. (*Id.*). Despite her requests, AHMSI refused to provide a breakdown of the charges
5 or accounting and refused to accept any payment less than \$15,000. (*Id.*).

6 The complaint alleged that on April 22, 2011, AHMSI caused a notice of default to be
7 prepared and filed. (*Id.*). Plaintiff alleged that the notice of default did not comply with NRS
8 § 107.080(2)(a)(2), (3) because Plaintiff did not receive any notification of the notice of default.
9 (*Id.* at 7). On September 14, 2011, AHMSI caused a notice of trustee's sale to be recorded.
10 (*Id.*). Plaintiff alleged that the notice of trustee's sale did not comply with NRS § 107.080(4)(a)-
11 (c) because she did not receive notification of the trustee's sale. (*Id.*). Plaintiff alleged that
12 AHMSI did not comply with the notice requirements of NRS § 107.080(4)(d). (*Id.* at 8).
13 Plaintiff alleged that the notice of default and the notice of trustee's sale were invalid because
14 they were recorded without notice to her. (*Id.*).

15 Plaintiff alleged one cause of action for declaratory judgment. (*Id.* at 9). Specifically,
16 she sought declaratory judgment that: (1) the April 22, 2011 notice of default was void *ab initio*;
17 (2) the September 14, 2011 notice of trustee's sale was void *ab initio*; (3) AHMSI could not
18 refuse to accept her payments; and (4) AHMSI had to disgorge the late fees and charges it
19 had collected when it failed to give her proper notice of the increase in her payments. (*Id.*).
20 The Court notes that there have been no allegations that the foreclosure sale has occurred.

21 DISCUSSION

22 Plaintiff filed a motion to remand and asserts that the amount in dispute is
23 approximately \$15,000. (Mot. to Remand (#3) at 4). Plaintiff argues that this is not a
24 foreclosure avoidance suit. (*Id.* at 5). Instead, Plaintiff contends that the dispute is over the
25 demand for fees and charges in the amount of \$15,000. (*Id.*).

26 In response, AHMSI argues that Plaintiff's complaint challenges the terms of the deed
27 of trust and attempts to avoid the consequences set forth in the deed of trust. (Opp'n to Mot.
28 to Remand (#7) 2, 5). AHMSI states that the deed of trust at issue is for \$105,000 and

1 represents the declaratory relief sought. (*Id.* at 6).

2 In reply, Plaintiff argues that she is only disputing the foreclosure fees and costs and
3 property inspections and valuations. (Reply to Mot. to Remand (#9) at 3).

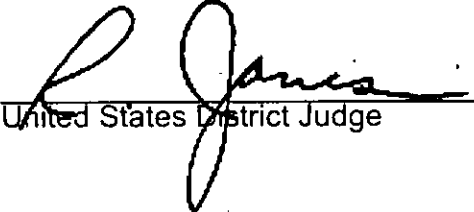
4 Federal district courts have original jurisdiction over all civil actions where the matter
5 in controversy exceeds \$75,000 and the lawsuit is between citizens of different States. 28
6 U.S.C. § 1332(a)(1). "In actions seeking declaratory or injunctive relief, it is well established
7 that the amount in controversy is measured by the value of the object of the litigation." *Cohn*
8 *v. Petsmart, Inc.*, 281 F.3d 837, 840 (9th Cir. 2002).

9 In this case, the Court finds that the object of the litigation is the \$15,000 demand for
10 fees and charges. The Court finds that Plaintiff must seek to void the notice of default and
11 notice of trustee's sale in order to challenge the fees at hand. The Court notes that Plaintiff
12 is not disputing the validity or the amount listed in the deed of trust. As such, the Court finds
13 that it lacks jurisdiction to hear this case because there is neither diversity nor federal court
14 jurisdiction. Accordingly, the Court grants Plaintiff's motion to remand (#3).

15 **CONCLUSION**

16 For the foregoing reasons, IT IS ORDERED that the Motion to Remand (#3) is
17 GRANTED. The Clerk of the Court shall remand this case back to state court.

18 DATED: This 11th day of May, 2012.

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22 United States District Judge
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